IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

CRIMINAL REVISION APPLICATION NO.149/2005

Smt. Ramabai Abhiman Manwatkar and three others

versus

Mr. Abhiman Maruti Manwatkar

Mr. Meghe, Advocate for the applicant

Mr. S. G. Karmarkar, Advocate for the respondent

CORAM: S.R. DONGAONAKR, J.

DATE: 26.9.2006.

Heard Mr. Meghe, learned Advocate for the applicant and Mr. Karmarkar, learned Advocate for the respondent.

Rule made returnable forthwith. Heard finally with the consent of the parties.

The revision applicants are challenging the order passed by the learned Judge Family Court, Nagpur in in petition No. E-320/97 dated 16.3.2005 by which the application of the applicants under section 125 of Criminal Procedure Code was allowed and the respondent was directed to pay maintenance of Rs.800/- to applicant no.1 and Rs.700/- to applicants no.2 to 4 each, in all Rs.2900/- per month, however from the date of the order [16.3.2005].

2] The learned counsel for the applicants has contended that considering the income of the respondent to be of Rs.12000/- per month, maintenance awarded to the applicants is at quite lower rate

and that is not enough for the requirements of the applicants.

3] As against this the learned counsel for the respondent has contended that the learned Judge, Family Court, after having considered the income of the respondent and other circumstances of the case and requirement of the applicants has fixed the quantum of maintenance rightly. Further according to him the order of maintenance from the date of the order is also correct.

4] To consider the submission of the learned counsel for the applicant that the order of the learned Judge, impugned in this revision as illegal, improper and unjust, the reasons recorded by the learned Judge while fixing the quantum of the maintenance and also while ordering the maintenance from the date of the order, need to be seen.

5] On perusal of the order it would be seen that the learned Judge has taken into consideration the salary slips of the respondent from the December, 1997 to 2000 and after perusing the same the learned Trial Judge has considered the income of the respondent to the tune of Rs. 8000/- per month after considering essential deductions.

6] The submission of the learned counsel for the respondent that the applicant no.2 has been married and therefore, the quantum of maintenance should be reduced on account of changed circumstances suitably, can not be considered, in the revision petition. He can move the Family Court under section 127 of the Criminal Procedure Code for this purpose.

7] The question is regarding the quantum of maintenance awarded by the Family Court i.e. to the tune of Rs.800/- per month to applicant no.1 and Rs.700/- to the applicant no.2 to 4, there appears nothing on record to suggest that this quantum is unreasonable. It could not also be pointed out from the record, any thing specific about the requirements of the applicants. No doubt ex-facie, this may appear inadequate, but that would not be sufficient to require this court to exercise the jurisdiction under section 397 of Criminal Procedure Code to alter this finding and therefore, it is difficult to interfere with the order of fixing of maintenance in respect of the applicants. If they desire to get increase in the maintenance, due to change in the circumstances, like increase in the requirement or enhancement in the income of respondent, they can certainly move the Family Court under section 127 of the Criminal Procedure Code.

8] The main grievance of the applicants to challenge the order of the Family Court seems to be based on the fact of granting maintenance from the date of order i.e. 16.3.2005.

9] On perusal of the reasons given by the learned Judge Family Court I do not find any sufficient reason as to why this maintenance was awarded from the date of the order. Learned Judge should have recorded reasons, if any, for the same. It is necessary to bear in mind that even if interim maintenance was awarded in this case, it was only to the tune of Rs.200/- for each of the applicant. It goes without saying that it is totally insufficient to maintain any woman or girl of growing age.

Further the respondent is living with other wife and has good service and earnings. Therefore, obviously this quantum of maintenance was not sufficient even during the pendency of the proceedings, for maintenance of the applicant. At any rate, I find it unsustainable in these circumstances of the case, it is totally unjust and improper. In such circumstances, the order of maintenance to the extent it making payable from the date of order needs to be set aside. Accordingly, to that extent the impugned order is quashed and set aside and the maintenance awarded by the learned Judge Family Court, Nagpur is made payable from the date of the application. From such maintenance amount due, maintenance amount paid during the pendency of the application shall be deducted. As there would be large amount to pay, the respondent is allowed to pay the arrears of maintenance in installment of Rs.400/- per month (Rs.100/- for each applicant) along with current maintenance payable, till all the total arrears are paid. Subject to this modification, rest of the order of learned trial Judge is maintained. Rule is made absolute in the aforesaid terms.

JUDGE

smp.